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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM SPARTANBURG COUNTY
HONORABLE J. MARK HAYES, II
CIRCUIT COURT JUDGE
OPINION NO. 2014-UP-172

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Willie A. Rogers and Vennie Rogers,)
)
 Appellants,)
)
 v.)
)
 Charles Carr, in his individual and)
 Official Capacity as the Personal)
 Representative of the Estate of)
 Thurman L. Bomar, Deceased,)
 Katherine Christian and Joyce King,)
)
 Respondents.)

PETITION SC COURT OF APPEALS
 FOR
 REHEARING

COME NOW the Appellants and respectfully request that this Appellate Court reconsider its decision, entered in its Unpublished Opinion No. 2014-UP-172 and grant the above Appellants a rehearing in this within appeal. This said request will be based on the fact that the Appellate Panel erred as follows:

1. In failing to understand that the Personal Representative, Charles Carr, breached his duty to the Respondents as required by Section 62-3-705 of the South Carolina Code of Laws, 1976, as amended; and the fact that the Respondents, jointly and

individually, hid and omitted the existence of the Appellants when they were aware that **the Appellants were the only surviving nieces and nephews of the Decedent**, (R. pp. 84-87; 91-98; 107-108; 116-118) and this fact was in and of itself evidence of **the Respondents' intent to deceive, mislead and defraud the Court**, Section 62-1-106 of the S. C. Code of Laws, 1976 which said fraud calls for the Respondents to forfeit any benefits and inheritance received from the Estate of Thurman L. Bomar to the Appellants..

2. In failing to understand that, by violating Section 62-1-106 of the South Carolina Code of laws, 1976, by **intentionally hiding and omitting the existence of the appellants, who were the only surviving nieces and nephews of the Decedent, the Respondents forfeited any benefits and inheritance from the Estate of Thurman L. Bomar and that these benefits or inheritance from the Estate of Thurman L. Bomar should be transferred to the Appellants.**

3. In failing to rule that the Trial Court's decision below was bias and tainted against the Appellants when the Trial Court below "**interjected its own opinion** of its **familiarity** of so-called respected local attorneys and witnesses, the error being that the Trial Court's biasness "**tainted**" its decision when there was no evidence or **testimony presented below before the Trial Court to justify such bias findings.**

Although this was an action at law and a Circuit Court cannot disturb a Probate Judge's findings if there is any evidence to support it, In re Estate of Cumbee, 333 S. C. 664, 511 S. E. 2d 390 (S. C. Ct. of App. 1999), **an Appellate Court**

may decide “questions of law,” with no particular deference to the trial Court.”

Although this was an action at law below, **this case on appeal only concerns a “question of law”** as this Trial court below allowed its biasness to taint its decision in this case in favor of the Respondents.

In the trial below, the Respondents produced the testimony of an attorney, Charles Hodge, who “**purportedly**” **prepared the decedent Thurman Bomar’s Will, but neither this attorney, (R. pp. 62-67) nor a purported witness thereto, a Mary Ann Kunah, remembered the decedent or any memory of the event (R. pp. 68-70) or recognized the decedent’s picture..**

However, the Trial Court Judge below allowed his opinion of his “**so-called familiarity**” of the local attorneys and court employees whose names appeared on or connected to the Decedent Thomas Bomar’s Last Will and Testament of July 27, 1988 and to various deeds (R. pp. 172-178), **without any testimony being offered under oath on the alleged competence or respectability of these so-called respected local attorneys, to cloud and taint his judgment** and caused him to form a biasness against the Appellants and their case below **in violation of the law**. It must be remembered that the expectation of a fair and impartial Tribunal is a **basic tenets of all cherished notions of due process embodied in the United States Constitution**.

(Emphasis added). Mallett v. Mallett, 473 S. E. 2d 804 (S. C. Ct. of app. 1996);

In re Murchison, 349 U. S. 133, 75 S. Ct. 623, 99 L. Ed. 942 (1955), and the

and the Appellants should be afforded nothing less.

This Appellate Court, in the case of In the Matter of Betsy Campbell et. al. vs. Campbell, 666 S. E. 2d 908, (S. C. Ct. of App). 2008, found a clear bias on the part of the trial judge when the trial judge expressed his own opinions.

(Emphasis added).

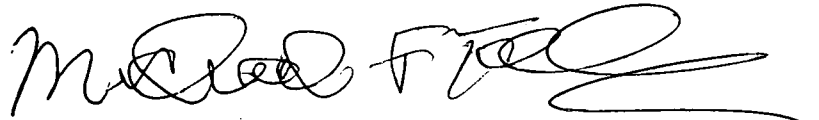
This is exactly what happened in the instant case below in the Trial court below and this case should not be treated any differently.

Should this decision in the Trial Court below be allowed to stand, **this bias decision of the part of the trial judge below stand to undermine the integrity of our judicial system.**

WHEREFORE, since this Appellate Panel failed to understand that, 1) by the Respondents intentionally hiding and omitting to list the existence of the Appellants when the Respondents were aware that the appellants were the only surviving nieces and nephews of the Decedent was **egregious and should not be tolerated by our Court, especially in cases in Probate Court where the Personal Representatives try to gain an unfair advantage for his own Siblings against non-Siblings who are the only living surviving heirs of the Decedent; and 2) where the trial Court judge's decision below is tainted by interjecting his own opinion of non-proven facts**, these Appellants respectfully request that this court reconsider its decision and reverse the Appellate Panel's Opinion or decision and/or grant these Appellants a rehearing and/or

require the Respondents to forfeit any benefits or inheritance received by Respondents from the Estate of Thurman L. Bomar's and transfer these benefits to the Appellants.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael F. Talley", with a large, stylized flourish extending to the right.

Michael F. Talley. #5465
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Dated: May 6, 2014

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Spartanburg County Court of Common Pleas
J. MARK HAYES, II, CIRCUIT COURT JUDGE

2012-ES-42-00162

Case No. 2012-CP-42-3705

Unpublished Opinion 2014-UP-72

Willie A. Rogers and Vennie Rogers.....Appellants,

v.

Charles Carr, in his individual and Official Capacity as Personal Representative
of the Estate of Thuman L. Bomar, Deceased, Katherine Christian and Joyce
King,Respondents.

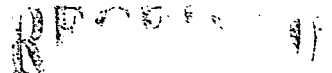
PROOF OF SERVICE

I certify that I, as the Appellants' undersigned attorney, have served a copy of the
Appellants' Petition for Rehearing upon the Respondents, Charles Carr, in his Individual
and Official Capacity as the Personal Representative of the Estate of Thurman L. Bomar,
Deceased, Katherine Christian and Joyce King , by depositing a copy of same in the
United States Mail, postage pre-paid, on May 6, 2014, addressed to the Respondents'
attorney of record, Mr. Charles P. Edwards, 200 Library Street (Upstairs) P. O. Box
2552, Spartanburg, South Carolina, 29304.



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